STATE OF MINNESOTA
IN COURT OF APPEALS
A10-615

In the Matter of the Civil Commitment of: Jesus Gabriel Rivera

Filed November 15, 2010
Affirmed
Toussaint, Judge

Kandiyohi County District Court
File No. 34-PR-09-65

Greta M. Smolnisky, Smolnisky & Kinney PC, Willmar, Minnesota (for appellant Jesus Gabriel Rivera)

Boyd A. Beccue, Kandiyohi County Attorney, John L. Kallestad, Assistant County Attorney, Willmar, Minnesota (for respondent Kandiyohi County)

Considered and decided by Toussaint, Presiding Judge; Halbrooks, Judge; and Stauber, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Judge

Appellant Jesus Gabriel Rivera challenges his continued commitment as mentally ill and the district court's order authorizing involuntary administration of neuroleptic medication. Because the district court found that the statutory criteria for continued commitment were met, the district court's findings were supported by the record, the district court considered and rejected less-restrictive alternatives, and the district court

evaluated the proper criteria when authorizing neuroleptic medication, we affirm.

D E C I S I O N

I.

Appellant first argues that the district court's findings are not supported by the evidence received during the commitment hearing. When reviewing a district court's commitment for mental illness, this court's review is limited to a determination of whether the district court complied with the Minnesota Commitment and Treatment Act. *In re Commitment of Janckila*, 657 N.W.2d 899, 902 (Minn. App. 2003). The district court's findings of fact will not be overturned unless clearly erroneous, but this court reviews de novo whether the evidence is sufficient to satisfy the requirements of the statute. *Id.* The record is considered in a light most favorable to the district court's decision. *In re Knops*, 536 N.W.2d 616, 620 (Minn. 1995).

After appellant's initial commitment as mentally ill, the Anoka Metro Regional Treatment Center (AMRTC) filed a six-month report pursuant to Minn. Stat. § 253B.12, subd. 1(c) (2008) and recommended continued commitment. A review hearing was held pursuant to Minn. Stat. § 253B.12, subd. 2a (2008), and the district court ordered appellant's continued commitment as mentally ill.

> The committing court shall not make a final determination of the need to continue commitment unless the court finds by clear and convincing evidence that (1) the person continues to be mentally ill, developmentally disabled, or chemically dependent; (2) involuntary commitment is necessary for the protection of the patient or others; and (3) there is no alternative to involuntary commitment.

Id., subd. 4 (2008). The district court, however, was not required to address

whether appellant had made a recent attempt or threat to physically harm himself or others or recently failed to provide himself with necessities. *Id.* "Instead, the court must find that the patient is likely to attempt to physically harm self or others, or to fail to provide necessary personal food, clothing, shelter, or medical care unless involuntary commitment is continued." *Id.*

Appellant argues that the record does not support a finding that he presents the requisite danger to himself. At the continued commitment hearing and *Jarvis* hearing, Dr. John Wermager, a psychiatrist at AMRTC, testified to appellant's continued need for commitment and the administration of neuroleptic medications. In regard to appellant's current condition and treatment, Dr. Wermager testified that appellant's continued diagnosis is schizophrenia, disorganized sub-type. Despite Dr. Wermager's belief that appellant had been able to "make some strides" while under treatment, appellant continued to present responsive psychotic control stimuli, did not understand his own illness, continued to display a disorganized thought process, and was unable to "utilize reality-based observations" in making decisions.

The district court also heard testimony from and was able to observe appellant. Appellant testified that he was willing to take his medication and was interested in getting his own apartment. But when appellant was asked to tell the court about his illness, he stated that it was "like it's a disorder that like maybe you get—or like a person gets nervous or anxiety. It's like someone who gets—like gets itchy . . . ." When appellant's attorney asked him if he meant like an itch on his skin, he responded that he did not but was unable to explain in any terms what he thought his illness was or what it meant for

him.

At the conclusion of the hearing the district court found that appellant was a danger to himself and "would not be able to provide for his own care" if he were released. In explaining on the record the reasons for the district court's decision to continue commitment, the district court stated:

> If he were to be released today, he would not be able to provide for his own care. I can tell that just by listening to him and observing and listening as well to the doctor's statements. I don't think he could make arrangement for an apartment at this point, let alone provide for food or medical care. And the inability to be able to understand the nature of the illness places serious doubts in my mind that he would continue to take medication. . . . [Appellant has] come a long way. He has moved onto the unit where they are working towards a discharge. I believe, if we were to stop that at this point, it would be premature and we would lose all the benefit of what we've accomplished so far.

These findings have record support. Based on the record of appellant's inability to care for himself prior to commitment, the continued diagnosis of schizophrenia, Dr. Wermager's testimony, and appellant's inability to comprehend his own illness, we conclude that the district court complied with the requirements of the Commitment Act. The district court's findings are supported by the record, and based on these findings, the district court properly concluded that appellant "is likely to attempt to physically harm self or others, or to fail to provide necessary personal food, clothing, shelter, or medical care unless involuntary commitment is continued." *Id.*

II.

Appellant argues that the district court failed to make adequate findings regarding whether less-restrictive alternatives to his continued commitment were available. A

finding that a person continues to require further commitment must be made on the record. Minn. Stat. § 253B.12, subd. 7 (2008). A determination that continued commitment is appropriate requires the district court to find that less-restrictive alternatives have been considered and rejected and to specify the reasons for rejecting each alternative. *Id.* "In reviewing whether the least restrictive treatment program that can meet the patient's needs has been chosen, an appellate court will not reverse a district court's finding unless clearly erroneous." *In re Thulin*, 660 N.W.2d 140, 144 (Minn. App. 2003).

The district court may rely on expert opinions to determine which commitment facility provides the least-restrictive alternative. *See In re Miner*, 424 N.W.2d 810, 815 (Minn. App. 1988) (holding that commitment to security hospital for mentally ill and dangerous patient was least-restrictive alternative available was supported by expert testimony), *review denied* (Minn. July 28, 1988). At the hearing, Dr. Wermager was specifically asked about the possibility of alternative, less restrictive, treatment options. Dr. Wermager testified that he did not feel any other less-restrictive option "would be the most prudent course of action" and that, based on appellant's continued disorganization, such less-restrictive options would not be warranted. The district court's order states that the court considered the possible alternatives and concluded that no reasonable alternative was available. The district court's finding that appellant's illness could not be adequately treated with other alternative dispositions complies with the statutory requirements and is not clearly erroneous.

III.

Finally, appellant challenges the order allowing the involuntary administration of neuroleptic medication. Appellant first argues that the district court erred in finding that a neuroleptic medication order was warranted because appellant testified that he would take the medication voluntarily. In addressing this argument, we must first consider whether appellant had the capacity to make such a decision. Generally a patient is "presumed to have capacity to make decisions regarding administration of neuroleptic medication." Minn. Stat. § 253B.092, subd. 5(a) (2008). In making a determination that a patient lacks the capacity to make decisions regarding the administration of neuroleptic medication the district court must consider:

> (1) whether the person demonstrates an awareness of the nature of the person's situation, including the reasons for hospitalization, and the possible consequences of refusing treatment with neuroleptic medications;
>
> (2) whether the person demonstrates an understanding of treatment with neuroleptic medications and the risks, benefits, and alternatives; and
>
> (3) whether the person communicates verbally or nonverbally a clear choice regarding treatment with neuroleptic medications that is a reasoned one not based on delusion, even though it may not be in the person's best interests.

Id., subd. 5(b) (2008).

Here, the district court found, and the record supports, that appellant did not understand the nature of his illness. The district court stated that, based on this lack of understanding, the court believed appellant did not understand the reasons why he would need to take the medication. This conclusion is supported by Dr. Wermager's testimony regarding appellant's severe disorganization and by his concern that appellant would

discontinue taking his medication. The district court's findings meet the statutory requirement for concluding appellant lacks the capacity to make decisions regarding the administration of medication because of appellant's lack of understanding of his treatment, consequences of failing to take the medication, and his own illness.

Appellant next argues that the district court's authorization of multiple neuroleptic medications was not supported by the record. "[A] district court's order must identify the neuroleptic medication or medications that are authorized to treat an unconsenting patient so that the order is tailored to the specific circumstances of the individual situation." *In re Commitment of Raboin*, 704 N.W.2d 767, 771 (Minn. App. 2005). When the district court authorizes the administration of neuroleptic medications the district court must act as a "reasonable person" and consider: "(1) the person's family, community, moral, religious, and social values; (2) the medical risks, benefits, and alternatives to the proposed treatment; (3) past efficacy and any extenuating circumstances of past use of neuroleptic medications; and (4) any other relevant factors." Minn. Stat. § 253B.092, subd. 7(c) (2008).

Dr. Wermager requested authorization for Clozaril, a medication appellant was presently taking, but also requested authorization for other neuroleptic medications that had previously been authorized but were not currently being administered: Zyprexa, Haloperidol, Haloperidol Decanoate (long-acting form of Haloperidol), Risperidone, Risperidone Consta (long-acting form of Risperidone), and Seroquel. First, as to the authorization for Clozaril, there was clear testimony at the hearing about its risks and benefits. Although appellant challenges the Clozaril order on the ground that the district

court set a maximum dosage higher than appellant's current dosage, this argument is without merit because the district court is not required to set a maximum dosage. Minn. Stat. § 253B.092, subd. 8(h) (2008) (stating district court "may" set maximum dosage). Because the district court considered the risks and benefits, as well as the past efficacy, the district court's authorization of Clozaril met the statutory requirements.

Second, we review appellant's challenges to the authorization of the additional medications that had been previously authorized in the initial commitment order but were not presently being administered to appellant. On the record Dr. Wermager testified to the requested medications and dosages but did not discuss the benefits of the medications or the potential side effects. The record indicates, however, that the district court authorized the administration of Zyprexa, Haldol, Risperdal, and Seroquel in the initial commitment proceedings and *Jarvis* hearing. The decision to authorize these medications was based on a lengthy affidavit submitted by Dr. Steven Pratt at AMRTC. This affidavit contains detailed information about the risks and benefits of the proposed medications. This affidavit was made part of the record and, based on this affidavit, the district court had the proper record information to evaluate the risks and benefits of the proposed medications. Because the district court specified the authorized neuroleptic medications and because the record contains the required information regarding the benefits and risks to appellant, as well as the history of the medication's effectiveness, appellant's challenge to the *Jarvis* order is without merit.

Affirmed.